

GEHRING & SATRIALE LLC
Louis R. Satriale, Jr. (LS-5027)
Joseph E. Gehring, Jr. (JG-8178)
370 Lexington Avenue, Suite 1200
New York, New York 10165
(212) 400-7420
(212) 400-7440 (fax)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDDY M. MOROCHO, WALTER TACURE on
behalf of themselves and others similarly situated,

Plaintiffs,

-against-

GEORGE C. KELLY and
NYACK COLONIAL CAR WASH, INC.,

Defendants.

07 Civ. 2979 (CLB) (MDF)

ELECTRONICALLY FILED

ANSWER

Defendants George C. Kelly (“Kelly”) and Nyack Colonial Car Wash, Inc. (“Nyack Colonial”), by their attorneys Gehring & Satriale LLC, for their Answer to the Complaint, dated April 12, 2007 (the “Complaint”), allege as follows:

INTRODUCTORY STATEMENT

1. Neither admit nor deny the allegations contained in paragraph 1 of the Complaint to the extent that they state Plaintiffs’ purported purpose in commencing this action.

2. Deny the allegations contained in paragraph 2 of the Complaint, except neither admit nor deny such allegations to the extent they state Plaintiffs’ purported purpose in commencing this action.

3. Deny the allegations contained in paragraph 3 of the Complaint, except neither admit nor deny such allegations to the extent they purport to set for the legal basis for Plaintiffs’ claims.

4. Deny the allegations contained in paragraph 4 of the Complaint, except neither admit nor deny such allegations to the extent they purport to set for the legal basis for Plaintiffs' claims.

5. Neither admit nor deny the allegations contained in paragraph 5 to the extent they call for a legal conclusion, except admit that Nyack Colonial's principal place of business is located within the Southern District of New York.

6. Deny the allegations contained in paragraph 6 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' places of residence.

7. Deny the allegations contained in paragraph 7 of the Complaint, except admit that Nyack Colonial is incorporated in New York and has its principal place of business in Nyack, New York.

8. Deny the allegations contained in paragraph 8 of the Complaint.

9. Deny the allegations contained in paragraph 9 of the Complaint, except neither admit nor deny such allegations to the extent they call for a legal conclusion.

SUBSTANTIVE ALLEGATIONS

10. Deny the allegations contained in paragraph 10 of the Complaint.

11. Deny the allegations contained in paragraph 11 of the Complaint.

CLASS ACTION ALLEGATIONS

12. Deny the allegations contained in paragraph 12 of the Complaint, except neither admit nor deny such allegations to the extent that they state Plaintiffs' purported purpose in commencing this action.

13. Deny the allegations contained in paragraph 13 of the Complaint.

14. Deny the allegations contained in paragraph 14 of the Complaint.

15. Deny the allegations contained in paragraph 15 of the Complaint.
16. Deny the allegations contained in paragraph 16 of the Complaint.
17. Deny the allegations contained in paragraph 17 of the Complaint.
18. Neither admit nor deny the allegations contained in paragraph 18 of the Complaint to the extent they reflect the state of Plaintiffs' knowledge.

FIRST CAUSE OF ACTION

19. Repeat and reallege the responses contained in the foregoing paragraphs.
20. Neither admits nor denies the allegations contained in paragraph 20 of the Complaint to the extent they call for a legal conclusion.
21. Deny the allegations contained in paragraph 21 of the Complaint.
22. Deny the allegations contained in paragraph 22 of the Complaint.
23. Deny the allegations contained in paragraph 23 of the Complaint.

SECOND CAUSE OF ACTION

24. Repeat and reallege the responses contained in the foregoing paragraphs.
25. Neither admits nor denies the allegations contained in paragraph 25 of the Complaint to the extent they call for a legal conclusion.
26. Deny the allegations contained in paragraph 26 of the Complaint.
27. Deny the allegations contained in paragraph 27 of the Complaint.
28. Deny the allegations contained in paragraph 28 of the Complaint.

THIRD CAUSE OF ACTION

29. Repeat and reallege the responses contained in the foregoing paragraphs.
30. Deny the allegations contained in paragraph 30 of the Complaint.
31. Deny the allegations contained in paragraph 31 of the Complaint, except admit that no tips were given to Kelly or the owners of Nyack Colonial.

32. Neither admits nor denies the allegations contained in paragraph 32 of the Complaint to the extent they call for a legal conclusion.

33. Deny the allegations contained in paragraph 33 of the Complaint.

FOURTH CAUSE OF ACTION

34. Repeat and reallege the responses contained in the foregoing paragraphs.

35. Deny the allegations contained in paragraph 35 of the Complaint.

36. Deny the allegations contained in paragraph 36 of the Complaint.

FIFTH CAUSE OF ACTION

37. Repeat and reallege the responses contained in the foregoing paragraphs.

38. Deny the allegations contained in paragraph 38 of the Complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Deny the allegations contained in paragraph 40 of the Complaint.

41. Deny the allegations contained in paragraph 41 of the Complaint, except neither admit nor deny such allegations to the extent they allege Plaintiff Morocho's subjective state of mind.

42. Deny the allegations contained in paragraph 42 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim against Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs, by their conduct, have waived any and all claims that he may have had against Defendants.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages against Defendants are barred and/or reduced in whole or in part by Plaintiffs' failure to mitigate.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendants are barred in whole or in part by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendants are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendants are barred by the doctrines of waiver and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are not proper representatives for either a collective action or a class action.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff Morocho was an exempt employee pursuant to the applicable statutes.

NINTH AFFIRMATIVE DEFENSE

Plaintiff Tacure did not work for Nyack Colonial at any relevant time.

TENTH AFFIRMATIVE DEFENSE

This action is not properly a collective action pursuant to the applicable statute.

WHEREFORE, Defendants demand judgment as follows:

- A. dismissing the Complaint in its entirety;
- B. awarding Plaintiffs nothing;
- C. awarding Defendants their costs and reasonable attorneys' fees; and,

D. awarding Defendants such other and further relief as is just and proper.

Dated: November 8, 2007

GEHRING & SATRIALE LLC

By: s/
Joseph E. Gehring, Jr. (JG8178)

370 Lexington Avenue
Suite 1200
New York, New York 10017
(212) 400-7420
(212) 400-7440 (fax)
Attorneys for Defendants